Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1970

No 71-38

STANLEY V. TUCKER,
Petitioner

-v-

WILLIAM B. MOLLER, et al,

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE SECOND CIRCUIT

STANLEY V. TUCKER
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1970

STANLEY V. TUCKER, **Petitioner**,

-v-

WILLIAM B. MOLLER, et. al.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

Petioner prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals For the Second Circuit ent ered in the above entitled cases April 9, 1971 affirming an order made in the District Court, District of Connecticut, on Nov. 9, 1970 dismissing Petitioner's Complaint due to lack of "color of state law" to establish jurisdiction under the civil rights statutes.

CITATIONS TO THE OPINIONS BELOW:

The Opinion and Order the the District Court dismissing the Complaint of Petitioner is attached hereto as Appendix A. The Order of the 2 CA affirming the order of the District Court is attached hereto Appendix B.

JURISDICTION:

The order of the Court of Appeals was entered April 9, 1971. The jurisdiction of this Court is invoked under 28 USC 1254 (1).

QUESTION PRESENTED:

Petitioner appearing in the District Court on a Motion To Dismiss, with the allegations of the complaint deemed true for purposes of the Motion, was subjected to a lengthy personal attack using newspaper headlines from Calif. and other private and/or scandalous matter in a scurrilous attempt to prejudice the Trial Court and deny Petitioner a fair hearing. This scandalous attack was part of a conspiracy stretching from California to Connecticut for purposes of perpetuating Connecticut's illegal attachment laws by denial of Petitioners fundamental constitutional rights to a fair and impartial hearing on the defenses he was attempting to assert:

1. Where a complaint contains allegations of conspiracy and torts committed in furtherance of said conspiracy and jurisdiction claimed under 42 USC 1985 is "color of state law" necessary?

2. As a result of state-granted powers unique to Connecticut alone among the 50 states are the actions of Connecticut attorneys under "color of state law" when the attorneys committ torts to perpetuate their illegal state granted powers?

CONSTITUTIONAL PROVISIONS INVOLVED:

The constitutional provisions involved are the First, the Fourth, the Fifth, and Fourteenth Amendments to the United States Constitution all set forth herein Appendix C.

STATEMENT OF THE CASE:

Petitioner, Stanley V. Tucker, is a Building Contractor in Connecticut and sought via civil

rights complaint, C. A. No 13912, filed in the District Court-Conn. to enforce his rights to Due Process by challenging the constitutionality of Connecticut's pre-judgment attachment and Mechanics Lien laws.

Defendants acting in concert and conspiracy with various John Does in California conducted a scurrilous and malicious attack on Petitioner in hearing in open court and in pleadings filed seeking to:

1. Injure Petitioner and deny to Petitioner his First Amendment right to petition the courts for redress of grievances.

2. Injure Petitioner and deny Petitioner his Fourth Amendment right to privacy in his personal affairs.

3. Injure Petitioner and deny Petitioner his Fifth Amendment right to due process by fair and impartial trial on the merits.

4. Injure Petitioner and deny Petitioner his 14th Amendment rights to due process consisting of hearing and notice in respect to his good name and reputation.

5. Injure Petitioner and deny Petitioner his 14th Amendment Right to Due Process and Equal Protection of the laws by the above mentioned torts.

REASONS FOR GRANTING THE WRIT:

This case presents an opportunity for this Court to establish beyond doubt three important propositions which in Petitioner's view are important parts of the fundamental constitutional guarantees and have been squarly adopted by the

Courts of Appeal and by the U. S. Supreme Court but which the District Court below and the 2 CA refuses to apply in this case.

First : - AS A RESULT OF UNIQUE POWERS GRANTED CONN. ATTORNEYS MAKING THEM COMMISSIONERS OF THE SUPERIOR COURT ARE CONN. ATTORNEYS OFFICERS OF THE COURT THUS ACTING UNDER "COLOR OF STATE LAW"

That ample color of law exists under the facts of this case appears from simple examination of recent decisions in the U. S. Supreme Ct and other Circuit Courts of Appeal.

Wisconsin v Constantineau 91 S Ct 507 ; In Wisconsin, supra, the Police Chief of Hartford Wisconsin posted under color of S 176.26 Wis. Sta. the names of "excessive drinkers" thus violating the good name, reputation, honor, and integrity of Constantineau without the minimum due process of notice and hearing.

In this instant action Conn. attorneys acting in concert and conspiracy with California John Does attacked the good name and reputation of Petitioner by first posting in the public records of the Town Clerk of Hartford, Conn. liens and attachments that were fraudulent and without merit thus exposing the Petitioner to public ridicule and scorn as a debtor that would not pay his alleged debts. Further acting again in concert and conspiracy with California John Does the Conn. attorneys then in open federal court attacked the good name and reputation of Petitoner by use of private and/or scandalous matter from California news paper headlines. On a motion to dismiss under Federal law the allegations of the complaint

BEST AVAILABLE COPY.

are deemed true. The Defendant's conspiratorial acts were committed under color of Conn G.S. 51-85 and 52-89 which granted the attorneys special powers and privileges as officers of the court:

§ 51-85. Commissioners of the superior court

Each attorney at law admitted to practice within the state, while in good standing, shall be a commissioner of the superior court and, in such capacity, may, within the state, sign writs and subpoenas, take recognizances, administer oaths and take depositions and acknowledgments of deeds. (1949 Rev., § 7648.)

§ 52-89. Mesne process; contents and signature

Mesne process in civil actions shall be a writ of summons or attachment, describing the parties, the court to which it is returnable, the return day and the date and place for the filing of an appearance and shall be accompanied by the plaintiff's complaint. Any such writ may run into any county and shall be signed by a commissioner of the superior court or a judge or clerk of the court to which it is returnable.
(1969, P.A. 520, § 2.)

1969 Amendments

1969, P.A. 520, § 3, substituted, in the first sentence, the words "the return day and the date and place for the filing of an appearance" in lieu of "and the time and place of appearance" following "which it is returnable".

1969, P.A. 520, § 3, provided that "this act shall take effect October 1, 1969, provided forms in use prior to said date under the provisions of sections 52-89 and 52-90 of the general statutes, revised to 1965, may continue to be used until October 1, 1970".

Library references

Mesne process, see Conn. Practice Book Ann. by Kaye and Moller, Vol. 1, § 28.

Defendants sought via torts committed while acting under color of said statutes to enforce prejudgment attachments and Mechanics Liens that Petitioner contends are void and unconstitutional in light of .....Sniadach v Family Finance 395 U. S. 337, Jones Press v Motor Travel 176 NW 2d 87, Larson v Fetherston 44 Wis 2d 712, Tucker

v Burton 319 F Supp 567, Hall v Garson, 430 F 2d 430, Klim v Jones 315 F Supp 109, Lapprease v Raymours Furniture, 315 F Supp 716, McConnaghly v City of N. Y., NYC Civil Court Trial Term 1969.

The Defendants seeking to extort illegal gains by harsh, discriminatory attachments were at all times acting under color of Conn. G. S. 49-33, Mechanics Liens, and G. S. 52-279, 52-280, 52-285 the pre-judgment attachment statutes Petitioner claims are illegal and void.

Second : - NO COLOR OF STATE LAW IS NEEDED FOR FEDERAL JURISDICTION UNDER 42 USC 1985.

1985. Conspiracy to interfere with civil rights.—

Second. If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny

to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

A long series of soundly established federal law has affirmed that the allegations of a conspiracy plus the wilful commission of torts in furtherance of said conspiracy invokes the jurisdiction of 42 USC 1985, civil rights.

A conspiracy of private persons to deprive a citizen of "equal protection of the laws, or of equal privileges or immunities under the laws" enacted under the U. S. Constitution " is within this section provided the conspirators commit an act in furtherance of the conspiracy whereby the person was injured in his person or property irrespective of whether the conspirators proceeded under color of authority of the state or otherwise."

Giles v Armstrong (CA 7) 207 F 2d 284

A CLASSIC SUPPORTING JURISDICTION UNDER THE CIRCUMSTANCES OF THIS CASE IS:

"Where appelles conspired to obstruct & defeat the due course of justice in Michigan by depriving Appellant of her right to be tried in accordance with due process of law the 6th Circuit Court of Appeals on Feb 8, 1949 affirmed civil rights jurisdiction."

McShane v Moldovan 172 F 2d 1016

A recent affirmation of civil rights jurisdiction over conspiracies of this type was made in the 9th Circuit on Oct 13, 1969:

"Suit may be brought against private individuals under Civil Rights Act if a conspiracy is established between them and the state or local officials who clearly acted under color of state law. 42 USC 1983, 42 USC 1985
Gillibeau v City of Richmond 417 F 2d 426

Third : - DECISIONS IN OTHER CIRCUITS, AND IN U. S. SUPREME COURT AFFIRM FEDERAL JURISDICTION

a. Wisconsin v Constantineau supra, see page four supra. Hall v Garson 430 F 2d 430.

In Hall, supra, again civil rights jurisdiction was affirmed under 42 USC 1983 w where a Texas landlady impounded a TV for unpaid rent. Both Klim, infra, and Hall are on all fours with the jurisdictional question herein.

. Klim v Jones 315 F Supp 109 USDC N.D. CALIF

Again civil rights jurisdiction, 42 USC 1983, affirmed where California Inkeepers Lien Law was held unconstitutional. In this case the civil rights jurisdiction over Jones, the innkeeper, was based on Jones impounding and attaching the personal clothing and possessions over $5 in rent due. July 17, 1969.

. LaPrease v Raymours 315 F Supp 716 USDC NDNY

Again civil rights jurisdiction, 42 USC 1983, was affirmed over the New York replevin sa statute. The Raymours Furniture Co repossed or made a "prejudgment attachment" of various items of kitchen furniture. This procedure was held violative of due process. The color of law - the replevin statute authorizing the replevin. This case, too, is "on all fours" with this instant action where Conn. Attorneys acting under statutes giving them special power to issue Writ of Attachments without notice or hearing violated Petitioners rights by levying Writs of attachment and mechanics liens on his property without notice or hearing. Then acting in concert and conspiracy with the

California Defendants, the Conn. Defendants sought to obstruct and hamper the due course of justice using their authority as attorneys derived from G. S. 51-85 to commit torts against Petitioner to deny to Petitioner due process in Federal Court.

d. Gillibeau v City of Richmond 417 F2d 426

Again civil rights jurisdiction, 42 USC 1983, upheld over a board of supervisors, city policemen and others who violated the 4th amendment right of Gillibeau by unreasonable search.

Petitioner contends in this action Defendants violated his 4th amendment rights to privacy by bringing out various details of his private life, with malice and falsity for purpose of intimidating Petitioner from testifying freely, truthfully, and for the purpose of hindering, obstructing, and defeating the due course of justice in the District Court. The tort = violation of Petitioner's 4th amendment rights. The purpose of the conspiracy = to deny to Petitioner his 5th and 14th amendment rights to due process.

e. Hill v Toll 320 F Supp 185 Dec 9, 1970

Private bailbondsmen acting under color of a Penn. statute gave Toll a savage beating for evading a bail bond during an arrest and jailing . CIVIL RIGHTS JURISDICTION UPHELD OVER THE PRIVATE BAIL BONDSMEN AND ALSO THE WARDEN. Hill, supra, fits four square the jurisdictional situation herein. The color of law was provided herein where Conn. attorneys conspired to levy illegal attachments.

CONCLUSION:

THIS IS A CASE OF FIRST IMPRESSION TO THE UNITED STATES SUPREME COURT REGARDING AN IMPORTANT QUESTION OF CONSTITUTIONAL LAW UNRESOLVED IN CONN. AND IN THE 2ND C.A.

Where Defendants acted under color of special powers that Connecticut alone among the fifty states grants to attorneys as a priviledged class making them Commissioners of the Superior Court and Officers of the Courts then surely there is sufficient color of state law generated to satisfy the Civil Rights Statutes, 42 USC 1983 and 42 USC 1985.

When Connecticut attorneys commit torts in concert and conspiracy with out of state defendants(California John Does) to deny to Petitioner his 1st, 4th, 5th and 14th Amendment rights then no color of state law is needed to satisfy the conspiracy clauses of 42 USC 1985.

Let justice be done and this case reversed and remanded for trial on the merits.

For these reasons Petitioner prays that the Writ be granted.

Respectfully submitted:

By_____
STANLEY V. TUCKER
PETITIONER

APPENDIX A: - RULING IN THE DISTRICT COURT

This civil rights suit was brought pro se by plaintiff Tucker seeking damages and inunctive relief against two lawyers and the law firm of which they are both members. Tucker alleges that tortious conduct by the defendants has deprived him of"due process and equal justice" in violation of 42 USC 1983. He also alleges a conspiracy among these defendants and others not known to deprive him of constitutional rights by tortious conduct in violation of 42 USC 1985. Defendants have moved for dismissal.

The controversy here arises out of proceedings in connection with three other cases now pending in this court, also instituted by Tucker pro se. TUcker v Conn, Mason Contractors Inc., C. No 13, 785; Tucker v Maher, Civ No 13, 786; Tucker v Anderson, Civ No 14787. The basis of Tucker's claim in the instant case is his contention that the defendant attoryneys individually and in concert with each other and with others not known, libeled and slandered him in briefs and oral argument on motions to dismiss the earlier three suits.

On this motion to dismiss, plaintiff is entitled to that extra measure of indulgence appropriate to pro se pleadings for the protection of civil rights Beard v. Stephens, 372 F 2d 685, 698 (5th Cir. 1967), and the court must assume the truth of his factural allegations. Cooper v Pate, 378 U. S. 546 (1944) (per curiam). Conclusions of law stated in the complaint, however, are not presumed to be accurate, Mississippi Valley Structural Steel Co. v. Huber, Hunt & Nichols, Inc. 295 F. Supp 139, 140 (S. D. Ill. 1969), and where it appears to a certainty that plaintiff would be entitled to no relief under any state of facts that would be

proved in support of his claim, the complaint should be dismised. Holmes v NYC Housing Auth. 398 F 2d 262, 265 (2d Cir 1968). That is what must be done in this case.

To state a claim upon which relief may be granted under the Civil Rights Act, 42 USC 1983, 1985, the acts alleged must not only amount to deprivations of a constitutional right, see Travers v Paton, 261 F Supp 110 (D. Conn. 1966), but also be done "under color of" state law. See Adickes v S. H. Kress & Co. 398 U. S. 144, 161 (1970); Jobson v Henne, 355 F 2d 129, 133 (2 d Cir 1966). It is now weell settled that an attorney performing in his professional capacity, though an officer of the court, is not acting as a state officical or under color of state law within the meaning of the Civil Rights Act. Myers v Couchara, 313 F. Supp. 873 (E.D. Penn 1970); Jemzura v Belden, 281 F. Supp 200; Kregger v Posner, 248 F. Supp 804, 806 (E. D. Mich 1966). Clearly the defendants here, in brief and oral argument before the court in the prior cases brought by Tucker, were acting only as private individuals in a professional capacity. As such their conduct genarated no coloration of state law sufficient to permit relief under the Civil Rights Act.

Accordingly, the motion to dismiss the complaint is hereby granted.

SO ORDERED.

Dated at Hartford, Connecticut, this 30th day of September, 1970.

M. JOSEPH BLUMENFELD
UNITED STATES DISTRICT JUDGE

APPENDIX B: B1

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 716—September Term, 1970.

(Argued March 19, 1971 Decided April 9, 1971.)

Docket No. 35685

STANLEY V. TUCKER,

Plaintiff-Appellant,

—v.—

WILLIAM R. MOLLER, EDMUND T. CURRAN, REGNIER, MOLLER & TAYLOR, a Partnership, JOHN DOES, A, B, C, and D,

Defendants-Appellees.

Before:

MOORE and SMITH, *Circuit Judges,*
and TIMBERS,* *District Judge.*

Appeal from judgment of dismissal of civil rights action in the United States District Court for the District of Connecticut, M. Joseph Blumenfeld, *Judge.* Affirmed.

STANLEY V. TUCKER, *Appellant Pro Se.*

PETER C. SCHWARTZ, Hartford, Conn. (Gordon, Muir & Fitzgerald, Hartford, Conn.), *for Defendants-Appellees.*

* Chief Judge, United States District Court for the District of Connecticut, sitting by designation.

PER CURIAM:

Plaintiff, proceeding *pro se*, appeals from dismissal by the United States District Court for the District of Connecticut, M. Joseph Blumenfeld, *Judge*, —— F. Supp. —— (D. Conn. 1970) of his civil action against attorneys representing opposing parties in actions attacking the constitutionality of Connecticut attachment statutes. We affirm on the opinion of Judge Blumenfeld below, for lack of action "under color of state law" to base claims under the civil rights statutes.

APPENDIX C: - CONSTITUTIONAL PROVISIONS

AMENDMENTS[1]

DDITION TO AND AMENDATORY OF THE CONSTITUTION OF THE UNITED STATES

by Congress and Ratified by the Several States, Pursuant to the Fifth Article of the Original Constitution

AMENDMENT 1[2]

Religious and political freedom.—Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT IV—SEARCHES AND SEIZURES

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V—CAPITAL CRIMES; DOUBLE JEOPARDY; SELF-INCRIMINATION; DUE PROCESS; JUST COMPENSATION FOR PROPERTY

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT XIV.—CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

AFFIDAVIT OF SERVICE PURSUANT TO
SUPREME COURT RULE 33 sub 3 (c)

STATE OF CONN.)
COUNTY OF HARTFORD) ss

Stanley V. Tucker, hereby deposes and says:

That on this ____ day of May 1971 I have served the within PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE SECOND CIRCUIT on Peter C. Swartz, Esquire, 39 Layfayette Street, Hartford Conn. 06106 by depositing (3) copies thereof enclosed in a sealed envelope, properly addressed with stamps appropriate affixed thereto and deposited same in a post office deposit mail box in Hartford, Conn.

By _____
STANLEY V. TUCKER

Before me, Notary Public in said State and County personally appeared STAANLEY V. TUCKER, known to me, and in my presence made oath to and executed the above instrument.

Dated: _____ By _____
NOTARY PUBLIC

My commission expires _____